

OUTLINE OF ICIS REPORT ON THE GOVERNMENT
EMPLOYEE SECURITY PROGRAM

On 14 July 1951, after it appeared that the Commission on Internal Security and Individual Rights (Minitz Committee) would probably never function, the President requested the National Security Council, through its Interdepartmental Committee on Internal Security, to make an investigation of the way the Government Employee Security Program is being administered and to advise him of changes believed to be required. Attached hereto is the report of the ICIS dated 29 April 1952.

Also attached hereto is a letter addressed to the Civil Service Commission dated 8 August 1952 requesting the CSC to prepare a plan combining the existing plans of loyalty, security and suitability of Federal employees into one plan.

Also attached hereto is a memorandum to the heads of all Executive Departments and Agencies directing them to cooperate with the CSC, to furnish the CSC with such personnel and other assistance as it may require, and to examine their own programs with aim to making sure that adequate procedural safeguards are provided.

For the purpose of the report the ICIS, with the aid of the CSC, divided the present programs now in existence under which employment may be denied or employees may be suspended or removed into three phases.

- (1) Loyalty
- (2) Security
- (3) Suitability - administered by CSC

The ICIS concluded that their assignment did not include the Federal Employee Loyalty Program or the Suitability Program, so they confined their study to the various Security Programs now in existence.

The ICIS made a study of P.L. 733 and the various other statutes establishing Security Programs for various agencies such as the National Security Act of 1947 which established the CIA Program. They discovered that of all the statutes establishing security programs only P.L. 733 and the AEC Act of 1946 gave employees any procedural rights for review, although several agencies who derived their authority from other statutes such as CIA had established their own procedures for review. Agencies not having specific authority for suspension or removal in security cases must rely on the Employee Loyalty Program and regular CSC procedures governing suitability for suspension or removal of security risks.

From their study the ICIS discovered the following deficiencies under the present programs.

- (1) Statutes do not provide in a uniform manner for pre-employment or pre-assignment investigations.
- (2) There are no uniform definitions of key terms such as "national security" or "sensitive position".

- (3) Instances where employees have been suspended upon receipt of derogatory information without serious consideration as to whether a security risk would have resulted from keeping the employee on the job until the investigation was completed and all information evaluated.
- (4) Cases where statements of charges were so vaguely and generally written as to render impossible an intelligent reply or defense by the employee.
- (5) Due to inadequacy of time limits in present legislation, security cases tend to drag on.
- (6) General agencies have not reduced their procedural steps to writing which results in a lack of uniformity and application of uneven standards.
- (7) No agency provides for review of a case involving demotion of an employee because of his removal to a non-sensitive position as a result of denial of security clearance.
- (8) Some agencies confront employees with derogatory information in a manner which coerces them into resigning.
- (9) There is a tendency for employees who transfer from one department or agency to another to be subjected to repeated investigations and clearances. Also, persons denied employment in one agency have not obtained objective consideration in another agency where there might be no basis for considering them as security risks.
- (10) There is no provision for a central review of removal actions.
- (11) There is a tendency to promise jobs to and sometimes appoint applicants prior to necessary inquiry.

The ICIS Concludes the Following:

1. Although there has been some agreement to the effect that a security program is not necessary since the Employee Loyalty Program and the CSC Suitability Program provides for most cases, the ICIS believes that a Security Program is necessary to fully protect national security. However, such a program should be limited to the following:
 - (a) Those departments or agencies whose functions are concerned with "national security".
 - (b) To only those positions within such an agency which may be designated as sensitive.

- (c) Those cases which cannot be taken either under the loyalty program or the CSC program for general suitability.
2. Uniformity can best be achieved by basing all security programs on the same legal authority.
3. The heads of agencies should be responsible for the administration of the program and for the establishment of procedures, in accordance with prescribed minimum standards.
4. There should be provision for a central review of procedures established by department and agency heads. Function would only be to review and advise as to whether the procedures meet certain minimum standards and the CSC is suggested for this purpose.
5. There should be provision for a limited central review of decisions of department and agency heads. The ICIS believes that ultimate decisions should remain in the head of the department or agency and the only function of the reviewing board would be limited to advising the agency head as to whether the employee has been given his procedural rights, has been given a fair opportunity to be heard, and whether the decision is supported by substantial evidence. The Loyalty Review Board of the CSC is recommended for this purpose.
6. Care must be exercised to assure that employees are not coerced into resigning.
- NOTE: The report states that the employee should be fully informed of all his rights but should not be influenced as to the course he will take.
7. Persons should not be appointed to sensitive positions without prior investigation or record check.
8. The ICIS studied the question of extending the same rights to applicants as to employees but concluded that applicants should not be extended the same rights of review, etc. as employees. However, in order not to be unfair to an applicant they believed that in no event should an official make a commitment or a promise of employment subject to an investigation. In those few cases where such a commitment or promise is necessary the head of the department or agency should provide for actual appointment to the position subject to investigation and fully inform the employee of the limited nature of the employment. In such cases the appointment would insure the person of all the rights afforded to an actual employee.
9. Departments and Agencies should accept from each other on a mutual and reciprocal basis the results of previous investigations and clearances, but denial of clearance by one agency should not result in denial by all others. If prior investigations do not meet minimum standards, supplemental investigation may be conducted.

10. The Employee Security Program should not be used in place of the Employee Loyalty Program or the CSC Suitability Program.

The ICIS then made certain recommendations set forth below which in most instances followed their conclusions:

1. "National Security" is defined as the safeguarding of the U. S. against any attempts to destroy or weaken it by force or violence, subversion, or any other means. Within the area required to be safeguarded are military, foreign relations, and related matters of the Government, the disclosure or compromise of which would aid our enemies or would endanger our defense. As used herein, the term national security does not include questions of policy or judgment with respect to other government matters relating to the general welfare, health and happiness of our people in their economic and political life, not requiring security classification.

"Sensitive position" is defined as (1) any position, the duties or responsibilities of which require that the incumbent have access to security information as material classified "Confidential", "Secret", or "Top Secret"; and (2) Any position which exists in an organizational entity where, because of the nature of the work being done, the very presence of the incumbent would make it possible for him to obtain possession of security information or material classified "Confidential", "Secret", or "Top Secret", or to commit acts which would directly endanger the national security.

2. Head of each department or agency should be responsible for identifying the sensitive positions on the basis of the above definition.

3. Head of each department or agency to which P.L. 733 is not applicable should decide whether there should be an employee security program in his agency and if so he should request Executive Order authority to bring his agency under P.L. 733.

4. Employee security programs should not be construed to replace, change or modify the Employee Loyalty Program or CSC Suitability Program.

5. Head of each department or agency should be responsible for prescribing and supervising security determination procedures in his Agency which should conform to the following minimum standards. His program would be reviewed by the CSC.

(a) Standards - Grounds for denial or removal on security grounds shall be that, "on all the evidence, there is reason to believe that the employment or retention of the individual in a sensitive position would be prejudicial to the national security."

Facts which may be considered shall include, but not be limited, to the following:

1. Activities and associations of the character listed in Part V, Section 2 of E.O. 9835, as amended, which, even though they do not support a finding of reasonable doubt as to loyalty, are sufficiently serious to establish a reason to believe that employment or retention of the individual in a sensitive position would be prejudicial to the national security.
2. Activities or associations which establish a reason to believe that the individual is not reliable or trustworthy, including deliberate misrepresentations, fabrications or omissions of material facts.
3. Criminal record or behavior manifesting drug addiction, habitual drunkenness, sexual perversion, moral turpitude or financial irresponsibility.
4. Facts which establish a reason to believe that the individual may be subjected to influence or pressure which may cause him to act contrary to the best interests of the national security.
5. Adjudication of insanity or treatment for serious mental or neurological disorder without evidence of cure.

(b) Adverse action should be taken only where required in interest of national security. Decision should be reached only after judicious evaluation, competent investigation and possibly interviews with employee. Consideration should always be given to transfer to a non-sensitive position.

(c) Suspensions

- (1) Should be advised promptly of reasons for suspension. If suspension notice also contains notice of removal action it should comply with requirements for removal action.
- (2) Should have prompt adjudication of case.
- (3) Where suspension is revoked and he is restored to duty he should be compensated for the period of suspension where it was not extended by his voluntary action.

(d) Removals

- (1) Should be in writing by a formal statement of charges which should inform the employee of the derogatory information (as far as possible). It should also advise of his right to submit a written answer supported by affidavits and of his right to a hearing before an agency board at which time he can appear personally, be represented by counsel and present evidence by witness or affidavit.

- (2) He should be afforded a hearing, at his request, before an agency board where he may be represented by counsel and present evidence by witness or affidavit. He may also be provided with a transcript of the hearing and be allowed to note exceptions. He should be promptly advised of the recommendation made by the board to the agency head if it is adverse and that he has a right to appeal to the agency head and submit additional written statements.
- (3) The recommendation of the board should be promptly reviewed by the agency head and the employee should be notified in writing of the decision of the Agency head and that there exists a right of review by the CSC.
- (4) The employee should not be involuntarily removed from the rolls until there has been a decision by the agency head after employee has had reasonable opportunity to perfect all his appeal rights within the Agency.
- (5) An employee who has been removed and later restored should be compensated for period of removal except for any extension of the period caused by his own action.
- (e) Review of Removal Decision of Agency Head - The employee should have the right to have his case reviewed by the CSC, which review shall be limited to:
 - (1) Determine that employee has been given his procedural rights and has had a fair opportunity to be heard.
 - (2) Determine that the decision of the Agency head is supported by substantial evidence.
 - (3) Determine if the individual is eligible for employment by another department or agency.In the event of an adverse finding of any of the above, the CSC should submit its advisory opinion to the Agency head for his consideration and decision.
- (f) Where necessary to denote because of security reasons the employee should have the same rights as in the case of a removal.
- (g) In the case of applicants no commitment of employment should be made subject to completion of investigation. Where absolutely necessary to make such a commitment the Agency head should provide for actual appointment to the position subject to investigation and the employee should be fully informed of the limited nature of his appointment. Such appointments will entitle the employee to all of the rights of a regular employee.

The Department of Defense interposed certain objections to the report of the ICIS which are outlined as follows:

1. In the recommendation for Standards they requested that it be changed to read "in a particular sensitive position", instead of merely "in a sensitive position". Their reason for this change was that the wording proposed by the ICIS would require consideration on the basis of Top Secret positions only, and would not permit consideration for positions in the category of Secret or Confidential.
2. They also requested that under Standards all of the general facts set forth by the ICIS which may be considered in connection with a determination on security grounds should be deleted and that in their place should be substituted certain specific facts such as falsification of PSQ, etc.
3. They also requested the deletion of the procedure for removal set up by the ICIS which requires that the recommendations by hearing boards should promptly be reviewed by the Agency head and the employee be notified of the decision of the Agency head and advised that he has a right of appeal to the CSC. In its place, they requested that the following be substituted:

"After such hearing and before a final decision adverse to him is rendered by the head of the department or agency, the employee shall be advised of his right, within a specified reasonable period of time, to appeal to the head of the department or agency or an official or officials designated by him, and to submit any additional written statement which he considers appropriate. The employee shall be notified promptly in writing of the final decision of the department or agency head, and if such decision is to remove the employee from the service, he shall be advised that there exists a right of review by the Civil Service Commission."

The reason given for this proposed change is that the Army and Air Force might have to change their existing procedure under the procedure recommended by ICIS.

These proposed changes were not acceptable to ICIS and the CSC.